

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DAVID CALVIN HARDY, # 159525,

Petitioner,

v.

Case Number: 10-CV-14310
Honorable George Caram Steeh

THOMAS BIRKETT,

Respondent.

**ORDER DENYING MOTION FOR
TRANSFER (MOTION/BRIEF FOR WRIT OF MANDAMUS (DKT. # 18))**

This is a habeas case filed under 28 U.S.C. § 2254. Pending before the Court is Petitioner David Calvin Hardy's "Motion/Brief for Writ of Mandamus." (Dkt. # 18). The Court construes the motion as a motion to be transferred. For the reasons stated, the Court will deny the motion.

Hardy commenced the instant action while incarcerated at the Mid-Michigan Correctional Facility. He states that he was transferred to the Chippewa Correctional Facility in violation of Federal Rule of Appellate Procedure 23(a) and requests to be returned to the Mid-Michigan Correctional Facility.

Federal Rule of Appellate Procedure 23(a) states:

(a) Transfer of Custody Pending Review. Pending review of a decision in a habeas corpus proceeding commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon application, a custodian shows the need for a transfer, the court, justice, or judge rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

By its own terms, Rule 23(a) applies to the transfer and custody of prisoners "pending review of a decision in a habeas corpus proceeding." No decision has been made on Hardy's habeas claim

in this Court and no appeal is pending. Rule 23(a) simply does not apply to his situation. *See Evans v. Luoma*, 2006 WL 2471938 (E.D. Mich. Aug. 24, 2006); *Mitchell v. McCaughtry*, 291 F.Supp.2d 823, 835 (E.D. Wis. 2003). Therefore, Hardy's motion is **DENIED**. (Dkt. # 18).

Dated: June 6, 2011

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on June 6, 2011, by electronic and/or ordinary mail and also to David Hardy at Chippewa Correctional Facility, 4269 W. M-80, Kincheloe, MI 49784.

S/Josephine Chaffee
Deputy Clerk